IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.17306 of 2006

Dated: September 1, 2006

Between:

M/s. Srinivasa High School, 1-3-183/20/29, Gandhinagar, New Bakaram, Hyderabad, rep. by its Correspondent Sri M.A. Ramakrishna.

… Petitioner

And

The Assistant Provident Fund Commissioner (Enforcement) Andhra Pradesh, Barkatpura, Hyderabad, and others.

… Respondents

Order:

Petitioner, a High School situated in Hyderabad, represented by its Correspondent, has filed this writ petition questioning proceedings No.AP/11446/T-5/Enforcement.II/2006/2862 dated 01-03-2006, issued by the first respondent, rejecting the application filed by it under Section 7-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ('the Act' for brevity).

2. Heard learned counsel for the petitioner, Mr. R. N. Reddy for first and second respondents, Mr. V. Raghu for third respondent and

learned Government Pleader appearing for the fourth respondent.

3. For the order I propose to pass, merits of the case need not be gone into. Briefly stated, the facts of the case are:

Third respondent, claiming to be an employee of the petitioner-school, approached the first respondent stating that the petitioner has not paid its contributions and administrative charges from March, 1993 to August, 2001. Thereon, first respondent issued notice to the petitioner and initiated an enquiry under Section 7-A of the Act for determining the dues. As the petitioner did not respond to the said notice, the claim of third respondent, aggregating Rs.53,625/- was determined *ex parte* by order dated 30-01-2002 and petitioner was asked to remit the same. While things stood thus, third respondent approached this court claiming regularization of her services and payment of amount determined by the first respondent, which was disposed of by an order dated 09-07-2002 directing the petitioner to pay 1/4th of the said amount subject to appeal. Pursuant thereto, petitioner is said to have paid an amount of Rs.28,625/- in toto. Thereafter, petitioner filed a review application before the first respondent on
05-09-2005 to review the order dated 30-01-2002 along with an interlocutory application to condone the delay of 1219 days. The same was rejected by the first respondent by the impugned order.

4. The grievance of the petitioner is that even without considering the application for condoning the delay, straightaway the same was rejected and it was directed to remit an amount of Rs.36,225/-.

5. Though it is submitted by the learned Standing Counsel appearing for the first respondent and learned counsel for the third respondent that, there is no provision for condoning the delay, it is to be seen that when there is no provision to condone the delay, such

power to condone the delay has to be construed as ancillary and incidental to the relief sought for in the review petition. Without considering the application of the petitioner on merits, the impugned order has been passed.

6. In that view of the matter, I set aside the order dated 01-03-2006 and direct the first respondent, the Assistant Provident Fund Commissioner, to consider the application filed by the petitioner for condoning the delay, in filing the review and pass appropriate orders within a period of six weeks from the date of receipt of this order, by giving opportunity to both parties and fixing a date for hearing.

7. The writ petition is disposed of with the foregoing observations and directions. There shall be no order as to costs.

JUSTICE R. SUBHASH REDDY.

September 1, 2006
MRR